

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Petition of the Connecticut Department) DA 98-743
Of Public Utility Control for Rulemaking) RM-9258

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF BELL ATLANTIC

The Bell Atlantic Companies ("Bell Atlantic")¹ submit these comments on the March 31, 1998, Petition of the Connecticut Department of Public Utility Control ("DPUC").²

The DPUC asks that the Commission modify its rule governing the use of area code "overlays" by permitting service-specific overlays. The Commission has consistently held such overlays to be unlawful. Nonetheless, Bell Atlantic supports a prompt rulemaking, in order to take account of changed circumstances in the industry, especially in the wireless sector. Both landline and wireless carriers are

¹ These comments are submitted on behalf of Bell Atlantic Mobile, Inc., which provides cellular radiotelephone service, and the Bell Atlantic telephone companies: Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Bell Atlantic-West Virginia, Inc., New York Telephone Company and New England Telephone & Telegraph Company.

² Public Notice, "Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited," DA 98-743, released April 17, 1998.

facing actual number exhaust which restricts their ability to serve customers, a special problem in the rapidly growing wireless industry. Wireless carriers are also facing demands for telephone number givebacks, which are uniquely burdensome for wireless carriers. In addition, wireless carriers face demands for number pooling, which they are physically unable to comply with today.

Bell Atlantic believes that the Commission should consider whether to amend the rule to permit more flexible use of overlays, as long as ten-digit dialing is required and wireless carriers are not forced to return numbers. This will achieve the Commission's numbering policy goals.

The Commission's administration of the North American Numbering Plan is based on several fundamental policies. First, the Commission has the responsibility to manage numbering resources efficiently to meet the needs of telecommunications carriers and the public for access to numbering resources. Second, the Commission has given the states authority to adopt specific areas code relief plans, but they must do so in accordance with Commission rules. Third, relief plans must not unreasonably discriminate against any telecommunications service or technology.³ 47 C.F.R. § 52.19, the Commission rule governing area code relief, implements these policies by setting requirements for relief plans that states must follow. Section

³ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order ("Second Report and Order"), 11 FCC Rcd 19392 (1996).

52.19(c)(3) specifically restricts the use of overlays as a relief option, and prohibits service-specific overlays. Bell Atlantic believes that this rule can be modified consistent with the underlying policies on which the rule is based.

Overlays Are the Best Solution to Number Exhaust. Rapid growth in the public's demand for new numbers has eclipsed the usefulness of geographic area code splits, the traditional form of relief. Demand is forcing state commissions to draw progressively smaller geographic areas for assigning new codes, to the point where New York, Los Angeles, Chicago and many other cities now must deal with multiple codes within the same city. The concept of an "area" code is losing its meaning.

Many states are finding that geographic splits are not only inadequate but are counterproductive, confusing and disruptive to their residents. Connecticut is typical. Barely three years ago the DPUC chose to implement a new area code for Connecticut through a geographic split of the state. That solution has, however, already proved inadequate. Because geographic splits can no longer deal effectively with number exhaust in many situations, overlays should be encouraged.

Overlays have additional benefits. First, they are more efficient than geographic splits because they allow new numbers to be assigned flexibly to meet variations in demand. Once the overlay code is used up, a second code can be overlaid. Splits, by contrast, necessarily depend on problematic assumptions about how rapidly each area will consume numbers. Where those assumptions prove incorrect, state commissions must confront the problem again. Second, with an

overlay, no consumers are required to change their numbers, a process that is at the very least inconvenient and, for business customers, may be costly as well. Third, overlays have a significant advantage for wireless carriers and their customers in that they do not require reprogramming of wireless handsets. In a split, wireless customers who are on the “new code” side of the boundary need to have their handsets reprogrammed with the new NPA, a task that often requires physically bringing the handset in to the carrier. In many other proceedings, the Commission has been presented with substantial evidence showing the considerable costs and burdens that reprogramming imposes on subscribers and wireless carriers, problems that are eliminated by overlays.⁴

Service Specific Overlays Are Not Inherently Unfair. The Commission’s first consideration of overlays was in the context of a service-specific plan for the Chicago, Illinois market, which involved not only the requirement that wireless carriers (and only such carriers) obtain numbers exclusively from the new area code (“segregation” or “exclusion”), but also the prohibition on accessing remaining numbers in the existing code and requiring them to return numbers in that code

⁴ See, e.g., Comments of Bell Atlantic Mobile, Inc., filed November 6, 1996, in response to Public Notice, “FCC Seeks Comment on Petition for Declaratory Ruling Filed By Massachusetts Department of Public Utilities Regarding Area Code Relief Plan for Area Codes 508 and 617,” NSD File No. 96-15, released October 23, 1996.

(“takeback”). The Commission found that each of these elements rendered the Ameritech proposal unlawfully discriminatory.⁵

The revolutionary changes in the use of numbering resources that have occurred in the more than three years since the Commission addressed the Ameritech proposal (and the more than four years since that proposal was made) warrant taking another look at whether a service-specific overlay that does not require takebacks necessarily renders a plan unlawful. Given the obvious benefits of overlays as a solution to resolve code exhaust, the Commission should consider whether service-specific overlays should continue to be per se unlawful. While the Ameritech decision held that the particular service-specific overlay before it was discriminatory, mere differential treatment of different carriers does not automatically constitute unlawful discrimination. Rather, a finding of unlawful discrimination involves evaluating the reasonableness of the practice and other situation-specific facts.⁶

It may be that different types of overlays may be the most appropriate solution in a particular area and one that wireless carriers would actually prefer. Wireless carriers might find a wireless-only code attractive because it will permit them to gain access more readily to the numbering resources they need. Wireline carriers may decide that a separate wireless overlay code will alleviate the different

⁵ Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596 (1995) (“Ameritech Order”) (1996).

wireline-related area code exhaust problems that do not involve wireless, such as the disaggregation of an area code's NXX blocks among many different wireline rate centers. Opening a new code for a limited number of carriers could also permit area code relief without requiring wireless carriers to take part in number pooling, which they are technically unable to do today.

The current rule, however, flatly prohibits wireless-specific overlays, and thus impairs states' ability to design area code relief that may meet the needs of their residents consistent with the Commission's NANP guidelines.⁷ The Commission should consider modifying this rule. States which want to consider a service-specific overlay would still be obligated to have a record demonstrating that this plan is not unreasonably discriminatory and does not deprive any carrier of access to needed numbering resources. In addition, carriers which believe that a state's adoption of this form of relief violates any Commission policy would always have the right to challenge that plan as unlawful. Nothing in this solution would abrogate the Commission's authority (and duty) to carefully review a state's area code relief plan to ensure that it meets the fundamental NANP administration policies.

(...continued)

⁶ Section 202 of the Communications Act prohibits only "unjust or unreasonable discrimination."

⁷ The Commission has recognized that the "states are uniquely situated to determine what type of area code relief is best suited to local circumstances." Second Report and Order at ¶ 283.

Wireless Overlays Must Be Conditioned on Ten-Digit Dialing and No Takebacks of Numbers. The current rules require that ten-digit dialing be required throughout both the existing and overlaid area codes as part of any overlay solution. 47 C.F.R. § 52.19(c)(3)(ii). If the Commission permits service-specific overlays, this particular requirement should be maintained. The DPUC does not seek any change in this specific requirement, and there is no reason to reexamine it at this time.⁸

The Commission should also reaffirm its finding that no state commission implementing an overlay may “take back” any numbers previously assigned to carriers. The Commission has correctly found that such takebacks are unlawful.⁹ They seriously disrupt wireless customers, and impose costs and burdens on wireless carriers, by requiring customers to return their wireless handsets for reprogramming with a different number. The rules do not now explicitly prohibit such takebacks. The Commission should use the opportunity presented by the DPUC’s rulemaking request to add an explicit prohibition on takebacks into Section 52.19.

⁸ If a state commission believes that the particular circumstances involved in an overlay plan necessitate modification or delay of ten-digit dialing, the commission may seek a waiver of this requirement.

⁹ Ameritech Order, 10 FCC Rcd at 4608; Second Report and Order at ¶ 305. In the latter decision, the Commission rejected as unlawful the Texas Public Utility Commission’s wireless-only overlay proposal in part because it included mandatory wireless takebacks.

Respectfully submitted,

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